

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact §§ 2.2-4303 and 2.2-4304 of the Code of Virginia, relating to the
2 Virginia Public Procurement Act; methods of procurement.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That §§ 2.2-4303 and 2.2-4304 of the Code of Virginia are amended and reenacted as**
5 **follows:**

6 § 2.2-4303. Methods of procurement.

7 A. All public contracts with nongovernmental contractors for the purchase or lease of
8 goods, or for the purchase of services, insurance, or construction, shall be awarded after
9 competitive sealed bidding, or competitive negotiation as provided in this section, unless
10 otherwise authorized by law.

11 B. Professional services shall be procured by competitive negotiation.

12 C. ~~Upon a determination made in advance by the public body and set forth in writing~~
13 ~~that competitive sealed bidding is either not practicable or not fiscally advantageous to the~~
14 ~~public, goods, services, or insurance may be procured by competitive negotiation. The writing~~
15 ~~shall document the basis for this determination.~~

16 Upon a written determination made in advance by (i) the Governor or his designee in
17 the case of a procurement by the Commonwealth or by a department, agency or institution
18 thereof or (ii) the local governing body in the case of a procurement by a political subdivision of
19 the Commonwealth, that competitive sealed bidding and competitive negotiation is are either
20 not practicable or not fiscally advantageous, insurance may be procured through a licensed
21 agent or broker selected in the manner provided for the procurement of things other than
22 professional services in subdivision 3 b of the definition of "competitive negotiation" in § 2.2-
23 4301. The basis for this determination shall be documented in writing.

D. Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

1. By the Commonwealth, its departments, agencies and institutions on a fixed price design-build basis or construction management basis under § 2.2-4306;
2. By any public body for the construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million;
3. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property; or
4. As otherwise provided in § 2.2-4308.

E. Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted in a designated public area or published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites.

F. In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The public body shall issue a written notice stating that the contract is being awarded on an emergency

51 basis, and identifying that which is being procured, the contractor selected, and the date on
52 which the contract was or will be awarded. This notice shall be posted in a designated public
53 area or published in a newspaper of general circulation on the day the public body awards or
54 announces its decision to award the contract, whichever occurs first, or as soon thereafter as
55 is practicable. Public notice may also be published on the Department of General Services'
56 central electronic procurement website and other appropriate websites.

57 G. A public body may establish purchase procedures, if adopted in writing, not requiring
58 competitive sealed bids or competitive negotiation for single or term contracts for goods and
59 services other than professional services if the aggregate or the sum of all phases is not
60 expected to exceed \$50,000; however, such small purchase procedures shall provide for
61 competition wherever practicable. Purchases under this subsection that are expected to
62 exceed \$30,000 shall require the written informal solicitation of a minimum of four bidders or
63 offerors.

64 H. A public body may establish purchase procedures, if adopted in writing, not requiring
65 competitive negotiation for single or term contracts for professional services if the aggregate or
66 the sum of all phases is not expected to exceed \$30,000; however such small purchase
67 procedures shall provide for competition wherever practicable.

68 I. Upon a determination made in advance by a public body and set forth in writing that
69 the purchase of goods, products or commodities from a public auction sale is in the best
70 interests of the public, such items may be purchased at the auction, including online public
71 auctions. Any authority, department, agency, or institution of the Commonwealth may
72 purchase information technology and telecommunications goods and nonprofessional services
73 from a public auction sale upon approval of the Chief Information Officer of the
74 Commonwealth. The writing shall document the basis for this determination. However, bulk
75 purchases of commodities used in road and highway construction and maintenance, and
76 aggregates shall not be made by online public auctions.

J. The purchase of goods or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

§ 2.2-4304. Cooperative procurement.

A. Any public body may participate in, sponsor, conduct, or administer a cooperative procurement agreement on behalf of or in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, or the U.S. General Services Administration, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In instances where any authority, department, agency, or institution of the Commonwealth desires to purchase information technology and telecommunications goods and services from another public body's contract and the procurement was conducted on behalf of other public bodies, such purchase shall be permitted if approved by the Chief Information Officer of the Commonwealth. Any public body that enters into a cooperative procurement agreement with a county, city, or town whose governing body has adopted alternative policies and procedures pursuant to subdivisions 9 and 10 of § 2.2-4343 shall comply with the alternative policies and procedures adopted by the governing body of such county, city, or town.

B. Subject to the provisions of §§ 2.2-1110, 2.2-1111, 2.2-1120 and 2.2-2012, any authority, department, agency, or institution of the Commonwealth may participate in, sponsor, conduct, or administer a cooperative procurement arrangement on behalf of or in conjunction with public bodies, private health or educational institutions or with public agencies or institutions of the several states, territories of the United States, or the District of Columbia, for

the purpose of combining requirements to effect cost savings or reduce administrative expense in any acquisition of goods and services, other than professional services. A public body may purchase from any authority, department, agency or institution of the Commonwealth's contract even if it did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies. In such instances, deviation from the procurement procedures set forth in this chapter and the administrative policies and procedures established to implement this chapter shall be permitted, if approved by the Director of the Division of Purchases and Supply.

Pursuant to § 2.2-2012, such approval is not required if the procurement arrangement is for telecommunications and information technology goods and services of every description. In instances where the procurement arrangement is for telecommunications and information technology goods and services, such arrangement shall be permitted if approved by the Chief Information Officer of the Commonwealth. However, such acquisitions shall be procured competitively.

Nothing herein shall prohibit the payment by direct or indirect means of any administrative fee that will allow for participation in any such arrangement.

C. As authorized by the United States Congress and consistent with applicable federal regulations, and provided the terms of the contract permit such purchases:

1. Any authority, department, agency, or institution of the Commonwealth may purchase goods and nonprofessional services, other than telecommunications and information technology, from a U.S. General Services Administration contract or a contract awarded by any other agency of the U.S. government, upon approval of the director of the Division of Purchases and Supply of the Department of General Services;

2. Any authority, department, agency, or institution of the Commonwealth may purchase telecommunications and information technology goods and nonprofessional services from a U.S. General Services Administration contract or a contract awarded by any other agency of

131 | the U.S. government, upon approval of the Chief Information Officer of the Commonwealth;
132 and

133 3. Any county, city, town, or school board may purchase goods and nonprofessional
134 services from a U.S. General Services Administration contract or a contract awarded by any
135 other agency of the U.S. government.

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